

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer C-37704.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer is properly rejected pursuant to 43 CFR 3103.3-1 where the offer is deficient in the first year's rental by more than 10 percent.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

James M. Chudnow has appealed from a decision dated June 27, 1983, of the Colorado State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer C-37704.

On April 27, 1983, appellant filed his noncompetitive oil and gas lease offer for 2,000 acres of land situated in T. 21 S., R. 70 W., sixth principal meridian, Custer County, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). The record shows that appellant submitted a check in the amount of \$2,000 with his lease offer. We note that the lease offer states that appellant was to remit the \$75 filing fee and \$2,000 as the first year's rental, or a total of \$2,075. No evidence of payment of the additional \$75 can be found.

The land applied for actually comprised 2,203.60 acres. BLM rejected the offer stating that the reason for the rejection was that the first year's rental was more than 10 percent deficient.

In his statement of reasons appellant agrees that the total acreage of the tract for which the offer was submitted was 2,203.60 acres. Appellant calculates the deficiency and concludes that the amount submitted was not more than 10 percent deficient. He bases this conclusion on the fact that 2,000 is greater than 90 percent of 2,203.60, and urges this Board to void the BLM decision.

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected where the offeror fails to tender the full first year's advance rental with his offer as required by 43 CFR 3103.3-1 and the amount tendered is deficient by more than 10 percent of the proper amount due. See e.g., James M. Chudnow, 62 IBLA 19 (1982).

Section 3103.3-1 in effect at the time that appellant filed, 1/ is as follows:

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Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

The BLM receipt (No. 471098) shows that the \$2,000 check was received and that \$75 was applied to the filing fee and the remaining \$1,925 was applied to the first year's rental. This application of funds allowed for processing of the offer, and, if the acreage stated on the offer had been correct, the submission would have been less than 10 percent deficient. We consider this accounting treatment to have afforded appellant the only opportunity to have this offer accepted. Any other treatment would have resulted in the summary rejection of the offer for failure to submit the filing fee.

As stated previously, the actual acreage of the tract sought by appellant was 2,203.60 acres. Therefore, the full first year's rental would have been \$2,204. Ten percent of this amount is \$220.40. Therefore, the minimum first year's rental that could have been submitted and found to be in compliance with the provisions of 43 CFR 3103.3-1 is \$1,983.60. Appellant submitted \$1,925 or \$58.60 less than the minimum allowable submittal. The determination that the lease offer should be rejected was correct.

1/ The regulations regarding oil and gas leasing on Federal lands were recently amended. Effective Aug. 22, 1983, the provisions in section 3103.3-1 are set forth at 43 CFR 3103.2-1 as follows:

"§ 3103.2-1 Rental requirements.

"(a) Each offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent or \$200, whichever is less, shall be accepted by the authorized officer provided all other requirements are met. Rental submitted shall be determined based on the total amount remitted less all required fees. The additional rental shall be paid within 30 days from notice of the deficiency under penalty of cancellation of the lease."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

